

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: BAIR HUGGER FORCED AIR  
WARMING DEVICES PRODUCTS  
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions

**PRETRIAL ORDER #23 –  
SUBSTITUTION OF PLAINTIFFS**

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The purpose of this Order is to establish procedures governing the substitution of an individual as plaintiff in place of a Plaintiff who dies before his or her individual action is remanded. This Order shall apply to all individual personal injury Complaints filed by Plaintiffs and their counsel for actions relating to Bair Hugger Forced Air Warming Products that are filed directly in MDL No. 15-2666 (JNE/FLN), or that are transferred to these proceedings. It is therefore **HEREBY ORDERED** that:

**A. Suggestion of Death.** Within ninety days of entry of this Order or the death of a plaintiff, whichever is later, plaintiff's counsel shall file a "Suggestion of Death" that identifies the plaintiff and describes the time, date, and circumstances of the plaintiff's death. If a Suggestion of Death has been filed (by counsel for any party) prior to the entry of this Order, plaintiff's counsel shall not be required to file an additional Suggestion of Death. Plaintiff's counsel, however, shall be required to comply with all remaining terms of this Order set forth below.

**B. Timing of Motion for Substitution.** The ninety-day time period for filing a Motion for Substitution, as required by Fed. R. Civ. P. 25(a), will commence upon the

filing of a Suggestion of Death or upon the passage of thirty days from the entry of this Order, whichever is later.

**C. Contents of Motion for Substitution.**

1. The Motion for Substitution shall identify the proposed substitute plaintiff by name and shall describe why the proposed substitute plaintiff is a “proper” party and why the claim has not been extinguished under the applicable state survivorship statute or applicable state common law.

2. If applicable state law requires the opening of an estate and the appointment of a personal representative to pursue the claims of a deceased plaintiff, plaintiff’s counsel shall initiate or cause to be initiated proceedings to open an estate and/or obtain the appointment of a personal representative for plaintiff within ninety days of the plaintiff’s death or ninety days from entry of this Order, whichever is later.

3. If available at the time of filing, plaintiff’s counsel shall attach as an exhibit to the Motion to Substitute a copy of any court order appointing the person sought to be substituted as the personal representative of the deceased plaintiff.

4. Nothing in this Order shall preclude Defendants from challenging the authority or capacity of the proposed substitute plaintiff

**D. Service of Plaintiff Fact Sheet.** Plaintiff’s counsel shall, on or before the date of filing of the Motion to Substitute, serve a Plaintiff Fact Sheet (or an amended Plaintiff Fact Sheet, if a Plaintiff Fact Sheet has previously been served on behalf of the deceased plaintiff) that has no core deficiencies as defined in Pretrial Order No. 14¶ 4 and that is verified by the person sought to be substituted as the personal representative of the

deceased plaintiff, along with a completed and signed authorization and the required documents. Service of the Plaintiff Fact Sheet must comply with Pretrial Order No. 16.

**E. Failure to Comply.** Plaintiff's failure to comply with provisions A, B or C of this Order will entitle Defendants to request a dismissal of plaintiff's action with prejudice in accordance with Fed. R. Civ. P. 25(a). If a plaintiff fails to comply with provision D, Defendants may move to dismiss the plaintiff's action with prejudice following Pretrial Order No. 14's procedures.

DATE: January 8, 2018

s/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge